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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

M.P. MOUNTANOS, INC., Plaintiff, Cross-defendant and Appellant, v. DCA II, LLC et al., Defendants, Cross-complainants and Respondents.	A124424 (Mendocino County Super. Ct. No. SCUK-CVG 0799627)

Appellant M.P. Mountanos, Inc. (MPM), a company of which Mark P. Mountanos (Mountanos) is a principal, entered into purchase agreements with respondents Donovan C. Albright and DCA II, LLC (collectively, DCA) for two parcels of land. Donovan C. Albright (Albright) is a member of DCA II. MPM thereafter sued DCA for damages and injunctive and declaratory relief, alleging breach of contract and fraud. DCA filed a cross-complaint for specific performance and declaratory relief and moved for summary adjudication of the second, third and fourth causes of action of appellant's complaint and for summary judgment on its cross-complaint. The trial court granted both motions, ruling that MPM's proffered parol evidence failed to create a triable issue of material fact. We affirm.

I. FACTS

In 2001, MPM subdivided 34 acres of its undeveloped land near Ukiah into four residential parcels. In 2004, a final parcel map and certain covenants, conditions and

restrictions (CC&R's) were recorded with Mendocino County, creating the Sanford Ranch Vineyard Subdivision. The CC&R's provided that "[n]one of the . . . lots may be resubdivided or split into lots of a lesser size than the size of the original lot without the prior written consent of [MPM]." This provision was later amended to provide that any subsequent resubdivision would require the written consent of three of the four original lot owners.

The four parcels were eventually split among three parties: DCA purchased parcels 1 and 2, Kenneth Seckora purchased parcel 3, and MPM retained parcel 4. Mountanos and Albright had been business associates and friends for many years prior to this particular transaction. The purchase agreements between DCA and MPM for parcels 1 and 2 contained a provision that allowed DCA to perform a "minor subdivision" on each parcel and required MPM to cooperate by consenting to the "minor subdivision." The purchase agreements did not limit the number of parcels that may result from such a "minor subdivision." The purchase agreements also contained a merger clause. A dual real estate agent for MPM and DCA drafted the agreements. Mountanos, as a principal of MPM, reviewed the purchase agreements on behalf of the company, and he discussed the above provision with the real estate agent. As well, MPM's attorney also reviewed the documents.

In 2006, DCA filed for and received approval from Mendocino County to resubdivide parcel 2 into four new lots.[1] A dispute arose concerning how many lots may be created by a "minor subdivision." MPM claimed that prior to the execution of the purchase agreements, DCA agreed not to further subdivide either parcel 1 or parcel 2 into more than two lots. DCA countered that the Mendocino County Code allows a "minor subdivision" to create up to four new lots. As a result, in 2007 litigation commenced on MPM's complaint and DCA's cross-complaint. The crux of the lawsuit revolved around the interpretation of the term "minor subdivision."

[1] DCA would later unilaterally scale the subdivision down to three new lots.

Before entering judgment, the trial court limited any resubdivision of parcel 1 to two resulting lots based on an admission in DCA's pleadings. In granting DCA's motions for summary adjudication and summary judgment, the trial court found that MPM's proffered parol evidence contradicted the terms of the parties' written agreement and did not support a meaning to which the term was reasonably susceptible. The trial court also held that MPM failed to establish that it had reasonably relied on DCA's alleged statements. However, under the complaint's first cause of action for breach of oral contract concerning shared costs of utility lines, the trial court entered judgment for MPM in the amount of $28,484.31.

II. DISCUSSION

A. *Standard of Review*

We review a grant of summary judgment de novo. (*Szadolci v. Hollywood Park Operating Co*. (1993) 14 Cal.App.4th 16, 19.) The reviewing court makes "an independent assessment of the correctness of the trial court's ruling, applying the same legal standard as the trial court in determining whether there are any genuine issues of material fact or whether the moving party is entitled to judgment as a matter of law." (*Iverson v. Muroc Unified School Dist*. (1995) 32 Cal.App.4th 218, 222.) We view the evidence in the light most favorable to the plaintiffs as the losing parties and any evidentiary doubts or ambiguities are resolved in the plaintiffs' favor. (*Wiener v. Southcoast Childcare Centers, Inc*. (2004) 32 Cal.4th 1138, 1142.) To meet its burden of showing that there is no merit to a cause of action, a defendant moving for summary judgment must demonstrate that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has made its showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Ibid.*)

B. *Interpretation of the Purchase Agreement*

MPM contends that the term "minor subdivision" is ambiguous and therefore the trial court should have considered extrinsic evidence of prior discussions with DCA to interpret the ambiguity. We disagree.

Our Civil Code[2] sets forth the basic principles of contract interpretation. Section 1636 provides that "[a] contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting . . . ." Where, as here, the contract is reduced to a writing, "the intention of the parties is to be ascertained from the writing alone, if possible . . . ." (§ 1639.) In addition, we are to understand the words of a contract "in their ordinary and popular sense . . . ." (§ 1644.) However, if the words are technical in nature, they are to be "interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense." (§ 1645.)

A court asks " 'not whether [the writing] appears . . . to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.' [Citations.]" (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, quoting *Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) The determination of the admissibility of extrinsic evidence to interpret a written agreement follows a two-step process. First, the court provisionally receives, without actually admitting, "all credible evidence concerning the intention of the parties to determine whether or not the written agreement is reasonably susceptible to the interpretation offered by a party." (*Blumenfeld v. R. H. Macy & Co*. (1979) 92 Cal.App.3d 38, 45.) The court then decides whether the disputed language is reasonably susceptible to the proffered interpretation. "[I]f the court decides in light of this extrinsic evidence that the contract is reasonably susceptible to the offered interpretation, then the court may admit such extrinsic evidence to interpret the contract. On the other hand, if the court decides in light of this [extrinsic] evidence that

[2] All further statutory references are to the Civil Code unless otherwise indicated.

the contract is not reasonably susceptible to the offered interpretation, then the evidence is irrelevant and inadmissible to interpret the contract." (*Ibid*.)

Here, the dispute centers on the interpretation of the term "minor subdivision" in the purchase agreements. MPM proffered extrinsic evidence that prior to executing the purchase agreements, Albright told Mountanos and their real estate agent that he intended to resubdivide parcels 1 and 2 into no more than two lots each. MPM argues, therefore, that the term should be interpreted to limit DCA to only two resulting lots. However, it is not reasonably susceptible to this interpretation.

The trial court determined that the term "minor subdivision" is not ambiguous. Rather, it is a technical term precisely defined by local ordinance. Section 17-20 of the Division of Land Regulations of the Mendocino County Code defines a "minor subdivision" as "a subdivision creating two (2), three (3), or four (4) lots or parcels." This definition does not require, as MPM asserts, a predetermination of the exact number of parcels to be created. Instead, it allows the parcel owner to choose the number of lots or parcels he or she would like to create and caps that number at four. Moreover, the Mendocino County Code is not "just another source of extrinsic evidence." To the contrary, the code is the governing law of the jurisdiction; and as such, its definition of "minor subdivision" is conclusive of the term's interpretation. (§ 1646 ["[a] contract is to be interpreted according to the law and usage of the place where it is to be performed"].)

The trial court reached this conclusion by properly accepting and considering on a provisional basis the extrinsic evidence proffered by MPM. After reviewing the applicable local law and rules of contract interpretation, it correctly determined that the agreements were not reasonably susceptible to the two-lot limitation as suggested by MPM's parol evidence. The evidence does not show that the term "minor subdivision" was "clearly used in a different sense" (§ 1645), i.e., not according to its technical meaning as defined by the Mendocino County Code. Despite any statements Albright made about his intent to subdivide the parcels into no more than two lots, the evidence also showed that Mountanos was an experienced developer who reviewed the purchase agreements and had them reviewed by his lawyer and real estate agent as well. The

resulting contract language clearly authorized DCA to proceed with a "minor subdivision application" and did not limit the number of lots created by a "minor subdivision" to two lots. As well, MPM had already accepted and adhered to the Mendocino County Code by complying with the subdivision procedures during the creation of the Sanford Ranch Vineyard Subdivision. To now claim that the scrutinized purchase agreement provisions authorizing DCA to submit an application for a "minor subdivision" to Mendocino County for approval should not be interpreted according to the county law governing such applications is illogical.

MPM further contends that the trial court's ruling concerning parcel 1, in which it limited any subdivision to two resulting lots, demonstrates that a limitation of two resulting lots is a reasonably susceptible meaning of the term "minor subdivision." However, this ruling was based on an admission made by DCA in the cross-complaint that it intended to limit the subdivision of parcel 1 to two parcels. " ' "A judicial admission in a pleading (either by affirmative allegation or by failure to deny an allegation) is entirely different from an evidentiary admission. The judicial admission is not merely evidence of a fact; it is a conclusive concession of the truth of a matter which has the effect of removing it from the issues. . . ." ' " (*Troche v. Daley* (1990) 217 Cal.App.3d 403, 409, quoting *Walker v. Dorn* (1966) 240 Cal.App.2d 118, 120.) Here, DCA's admission regarding the subdivision of parcel 1, coupled with MPM's lack of opposition, effectively removed the issue from the case.

C. *Fraud Claim*

MPM also asserted in its complaint that it was fraudulently induced to enter into the purchase agreement based on Albright's "representation" regarding his proposed subdivision of parcel 2. Specifically, Mountanos asserted in his declaration that "but for" DCA's statements regarding the intended subdivision of parcel 2, it would not have entered into the agreement. A claim for fraud in the inducement requires a misrepresentation involving a contract in which the promisor knows what he or she is signing but his or her consent is induced by fraud. (*Duffens v. Valenti* (2008) 161

Cal.App.4th 434, 449.) While some extrinsic evidence of fraud may escape the parol evidence rule, as we explain, not all such evidence will.

The parol evidence rule operates to prohibit "the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument." (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433.) The Code of Civil Procedure codifies the parol evidence rule, stating that the "[t]erms [of] a writing intended . . . as a final expression of [the] agreement . . . may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement." (Code Civ. Proc., § 1856, subd. (a); cf. § 1625.)

However, the parol evidence rule admits an exception for "other evidence . . . to establish . . . fraud." (Code Civ. Proc., § 1856, subd. (g).) This exception to the parol evidence rule permits parol evidence " 'to establish some *independent* fact or representation, some fraud in the procurement of the instrument or some breach of confidence concerning its use, and not a promise directly at variance with the promise of the writing.' [Citation.]" (*Alling v. Universal Manufacturing Corp., supra,* 5 Cal.App.4th at p. 1437, italics added.) In other words, courts will reject fraud claims "premised on prior or contemporaneous statements at variance with the terms of a written integrated agreement." (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 346, fn. omitted.)

These principles apply squarely to the instant case. MPM alleged that, prior to the execution of the agreement, DCA made a promise to limit any subdivision to two parcels instead of four. Because such a statement is directly at variance with the terms of the integrated writing, the fraud exception to the parol evidence rule would not apply.

III. CONCLUSION

The trial court properly ruled that the proffered extrinsic evidence should not be allowed to interpret the purchase agreement and correctly concluded that MPM's fraud in the inducement claim is barred by the parol evidence rule. Accordingly, the judgment is affirmed.

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Reardon, J.

We concur:

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Ruvolo, P.J.

_____
Sepulveda, J.